

# SENATE BILL No. 25

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-2-4.

**Synopsis:** Minimum wage. Increases Indiana's minimum hourly wage to \$7.25, and to \$6.25 for certain employees under 20 years of age, beginning July 1, 2007.

**Effective:** July 1, 2007.

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### Bowser

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January 8, 2007, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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**SENATE BILL No. 25**



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-2-2-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) Every employer employing  
3 four (4) or more employees during a workweek shall:  
4 (1) in any workweek beginning on or after July 1, 1968, in which  
5 ~~he~~ **the employer** is subject to the provisions of this chapter, pay  
6 each of ~~his~~ **the employer's** employees wages of not less than one  
7 dollar and twenty-five cents (\$1.25) per hour;  
8 (2) in any workweek beginning on or after July 1, 1977, in which  
9 ~~he~~ **the employer** is subject to this chapter, pay each of ~~his~~ **the**  
10 **employer's** employees wages of not less than one dollar and fifty  
11 cents (\$1.50) per hour;  
12 (3) in any workweek beginning on or after January 1, 1978, in  
13 which ~~he~~ **the employer** is subject to this chapter, pay each of ~~his~~ **the**  
14 **employer's** employees wages of not less than one dollar and  
15 seventy-five cents (\$1.75) per hour; and  
16 (4) in any workweek beginning on or after January 1, 1979, in  
17 which ~~he~~ **the employer** is subject to this chapter, pay each of ~~his~~ **the**



1           **the employer's** employees wages of not less than two dollars (\$2)  
2           per hour.

3           (b) Except as provided in subsection (c), every employer employing  
4           at least two (2) employees during a workweek shall, in any workweek  
5           in which the employer is subject to this chapter, pay each of the  
6           employees in any workweek beginning on and after July 1, 1990, and  
7           before October 1, 1998, wages of not less than three dollars and  
8           thirty-five cents (\$3.35) per hour.

9           (c) An employer subject to subsection (b) is permitted to apply a "tip  
10           credit" in determining the amount of cash wage paid to tipped  
11           employees. In determining the wage an employer is required to pay a  
12           tipped employee, the amount paid the employee by the employee's  
13           employer shall be an amount equal to:

14           (1) the cash wage paid the employee, which for purposes of the  
15           determination shall be not less than the cash wage required to be  
16           paid to employees covered under the federal Fair Labor Standards  
17           Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20,  
18           1996, which amount is two dollars and thirteen cents (\$2.13) an  
19           hour; and

20           (2) an additional amount on account of the tips received by the  
21           employee, which amount is equal to the difference between the  
22           wage specified in subdivision (1) and the wage in effect under  
23           subsections (b), (f), ~~and~~ (g), **(h), and (j)**.

24           An employer is responsible for supporting the amount of tip credit  
25           taken through reported tips by the employees.

26           (d) No employer having employees subject to any provisions of this  
27           section shall discriminate, within any establishment in which  
28           employees are employed, between employees on the basis of sex by  
29           paying to employees in such establishment a rate less than the rate at  
30           which ~~he~~ **the employer** pays wages to employees of the opposite sex  
31           in such establishment for equal work on jobs the performance of which  
32           requires equal skill, effort, and responsibility, and which are performed  
33           under similar working conditions, except where such payment is made  
34           pursuant to:

- 35           (1) a seniority system;
- 36           (2) a merit system;
- 37           (3) a system which measures earnings by quantity or quality of  
38           production; or
- 39           (4) a differential based on any other factor other than sex.

40           (e) An employer who is paying a wage rate differential in violation  
41           of subsection (d) shall not, in order to comply with subsection (d),  
42           reduce the wage rate of any employee, and no labor organization, or its

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1 agents, representing employees of an employer having employees  
 2 subject to subsection (d) shall cause or attempt to cause such an  
 3 employer to discriminate against an employee in violation of  
 4 subsection (d).

5 (f) Except as provided in subsection (c), every employer employing  
 6 at least two (2) employees during a workweek shall, in any workweek  
 7 in which the employer is subject to this chapter, pay each of the  
 8 employees in any workweek beginning on or after October 1, 1998, and  
 9 before March 1, 1999, wages of not less than four dollars and  
 10 twenty-five cents (\$4.25) per hour.

11 (g) Except as provided in subsections (c) and ~~(f)~~; **(j)**, every employer  
 12 employing at least two (2) employees during a workweek shall, in any  
 13 workweek in which the employer is subject to this chapter, pay each of  
 14 the employees in any workweek beginning on or after March 1, 1999,  
 15 **and before July 1, 2007**, wages of not less than five dollars and fifteen  
 16 cents (\$5.15) an hour.

17 **(h) Except as provided in subsections (c) and (j), during a**  
 18 **workweek:**

19 **(1) that begins on or after July 1, 2007; and**

20 **(2) during which an employer:**

21 **(A) employs at least two (2) employees; and**

22 **(B) is subject to this chapter;**

23 **the employer shall pay each employee a wage of not less than seven**  
 24 **dollars and twenty-five cents (\$7.25) an hour.**

25 ~~(h)~~ **(i)** This section does not apply if an employee:

26 (1) provides companionship services to the aged and infirm (as  
 27 defined in 29 CFR 552.6); and

28 (2) is employed by an employer or agency other than the family  
 29 or household using the companionship services, as provided in 29  
 30 CFR 552.109(a).

31 ~~(i)~~ **(j)** This subsection applies only to an employee who has not  
 32 attained the age of twenty (20) years. Instead of the rates prescribed by  
 33 subsections (c), ~~(f)~~; **and (g), and (h)**, an employer may pay an  
 34 employee of the employer, during the first ninety (90) consecutive  
 35 calendar days after the employee is initially employed by the employer,  
 36 a wage which is not less than:

37 **(1) four dollars and twenty-five cents (\$4.25) per hour, effective**  
 38 **March 1, 1999; and**

39 **(2) six dollars and twenty-five cents (\$6.25) per hour, effective**  
 40 **July 1, 2007.**

41 However, no employer may take any action to displace employees  
 42 (including partial displacements such as reduction in hours, wages, or

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1 employment benefits) for purposes of hiring individuals at the wage  
2 authorized in this subsection.

3 ~~(j)~~ **(k)** Except as otherwise provided in this section, no employer  
4 shall employ any employee for a workweek longer than forty (40) hours  
5 unless the employee receives compensation for employment in excess  
6 of the hours above specified at a rate not less than one and one-half  
7 (1.5) times the regular rate at which ~~he~~ **the employee** is employed.

8 ~~(k)~~ **(l)** For purposes of this section the following apply:

9 (1) "Overtime compensation" means the compensation required  
10 by subsection ~~(j)~~: **(k)**.

11 (2) "Compensatory time" and "compensatory time off" mean  
12 hours during which an employee is not working, which are not  
13 counted as hours worked during the applicable workweek or other  
14 work period for purposes of overtime compensation, and for  
15 which the employee is compensated at the employee's regular  
16 rate.

17 (3) "Regular rate" means the rate at which an employee is  
18 employed is considered to include all remuneration for  
19 employment paid to, or on behalf of, the employee, but is not  
20 considered to include the following:

21 (A) Sums paid as gifts, payments in the nature of gifts made at  
22 Christmas time or on other special occasions, as a reward for  
23 service, the amounts of which are not measured by or  
24 dependent on hours worked, production, or efficiency.

25 (B) Payments made for occasional periods when no work is  
26 performed due to vacation, holiday, illness, failure of the  
27 employer to provide sufficient work, or other similar cause,  
28 reasonable payments for traveling expenses, or other expenses,  
29 incurred by an employee in the furtherance of ~~his~~ **the**  
30 employer's interests and properly reimbursable by the  
31 employer, and other similar payments to an employee which  
32 are not made as compensation for ~~his~~ **the employee's** hours of  
33 employment.

34 (C) Sums paid in recognition of services performed during a  
35 given period if:

36 (i) both the fact that payment is to be made and the amount  
37 of the payment are determined at the sole discretion of the  
38 employer at or near the end of the period and not pursuant  
39 to any prior contract, agreement, or promise causing the  
40 employee to expect the payments regularly;

41 (ii) the payments are made pursuant to a bona fide profit  
42 sharing plan or trust or bona fide thrift or savings plan,

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1 meeting the requirements of the administrator set forth in  
 2 appropriately issued regulations, having due regard among  
 3 other relevant factors, to the extent to which the amounts  
 4 paid to the employee are determined without regard to hours  
 5 of work, production, or efficiency; or  
 6 (iii) the payments are talent fees paid to performers,  
 7 including announcers, on radio and television programs.

8 (D) Contributions irrevocably made by an employer to a  
 9 trustee or third person pursuant to a bona fide plan for  
 10 providing old age, retirement, life, accident, or health  
 11 insurance or similar benefits for employees.

12 (E) Extra compensation provided by a premium rate paid for  
 13 certain hours worked by the employee in any day or workweek  
 14 because those hours are hours worked in excess of eight (8) in  
 15 a day or in excess of the maximum workweek applicable to the  
 16 employee under subsection ~~(j)~~ (k) or in excess of the  
 17 employee's normal working hours or regular working hours, as  
 18 the case may be.

19 (F) Extra compensation provided by a premium rate paid for  
 20 work by the employee on Saturdays, Sundays, holidays, or  
 21 regular days of rest, or on the sixth or seventh day of the  
 22 workweek, where the premium rate is not less than one and  
 23 one-half (1.5) times the rate established in good faith for like  
 24 work performed in nonovertime hours on other days.

25 (G) Extra compensation provided by a premium rate paid to  
 26 the employee, in pursuance of an applicable employment  
 27 contract or collective bargaining agreement, for work outside  
 28 of the hours established in good faith by the contract or  
 29 agreement as the basic, normal, or regular workday (not  
 30 exceeding eight (8) hours) or workweek (not exceeding the  
 31 maximum workweek applicable to the employee under  
 32 subsection ~~(j)~~ (k) where the premium rate is not less than one  
 33 and one-half (1.5) times the rate established in good faith by  
 34 the contract or agreement for like work performed during the  
 35 workday or workweek.

36 ~~(j)~~ (m) No employer shall be considered to have violated subsection  
 37 ~~(j)~~ (k) by employing any employee for a workweek in excess of that  
 38 specified in subsection ~~(j)~~ (k) without paying the compensation for  
 39 overtime employment prescribed therein if the employee is so  
 40 employed:  
 41 (1) in pursuance of an agreement, made as a result of collective  
 42 bargaining by representatives of employees certified as bona fide

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1 by the National Labor Relations Board, which provides that no  
 2 employee shall be employed more than one thousand forty (1,040)  
 3 hours during any period of twenty-six (26) consecutive weeks; or  
 4 (2) in pursuance of an agreement, made as a result of collective  
 5 bargaining by representatives of employees certified as bona fide  
 6 by the National Labor Relations Board, which provides that  
 7 during a specified period of fifty-two (52) consecutive weeks the  
 8 employee shall be employed not more than two thousand two  
 9 hundred forty (2,240) hours and shall be guaranteed not less than  
 10 one thousand eight hundred forty (1,840) hours (or not less than  
 11 forty-six (46) weeks at the normal number of hours worked per  
 12 week, but not less than thirty (30) hours per week) and not more  
 13 than two thousand eighty (2,080) hours of employment for which  
 14 the employee shall receive compensation for all hours guaranteed  
 15 or worked at rates not less than those applicable under the  
 16 agreement to the work performed and for all hours in excess of  
 17 the guaranty which are also in excess of the maximum workweek  
 18 applicable to the employee under subsection ~~(j)~~ **(k)** or two  
 19 thousand eighty (2,080) in that period at rates not less than one  
 20 and one-half (1.5) times the regular rate at which the employee is  
 21 employed.

22 ~~(m)~~ **(n)** No employer shall be considered to have violated subsection  
 23 ~~(j)~~ **(k)** by employing any employee for a workweek in excess of the  
 24 maximum workweek applicable to the employee under subsection ~~(j)~~  
 25 **(k)** if the employee is employed pursuant to a bona fide individual  
 26 contract, or pursuant to an agreement made as a result of collective  
 27 bargaining by representatives of employees, if the duties of the  
 28 employee necessitate irregular hours of work, and the contract or  
 29 agreement includes the following:

30 (1) Specifies a regular rate of pay of not less than the minimum  
 31 hourly rate provided in subsections (c), ~~(f)~~, ~~(g)~~, and ~~(i)~~, **(h)**, and  
 32 **(j)** (whichever is applicable) and compensation at not less than  
 33 one and one-half (1.5) times that rate for all hours worked in  
 34 excess of the maximum workweek.

35 (2) Provides a weekly guaranty of pay for not more than sixty **(60)**  
 36 hours based on the rates so specified.

37 ~~(m)~~ **(o)** No employer shall be considered to have violated subsection  
 38 ~~(j)~~ **(k)** by employing any employee for a workweek in excess of the  
 39 maximum workweek applicable to the employee under that subsection  
 40 if, pursuant to an agreement or understanding arrived at between the  
 41 employer and the employee before performance of the work, the  
 42 amount paid to the employee for the number of hours worked by ~~him~~

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1 **the employee** in the workweek in excess of the maximum workweek  
2 applicable to the employee under that subsection:

3 (1) in the case of an employee employed at piece rates, is  
4 computed at piece rates not less than one and one-half (1.5) times  
5 the bona fide piece rates applicable to the same work when  
6 performed during nonovertime hours;

7 (2) in the case of an employee performing two (2) or more kinds  
8 of work for which different hourly or piece rates have been  
9 established, is computed at rates not less than one and one-half  
10 (1.5) times those bona fide rates applicable to the same work  
11 when performed during nonovertime hours; or

12 (3) is computed at a rate not less than one and one-half (1.5) times  
13 the rate established by the agreement or understanding as the  
14 basic rate to be used in computing overtime compensation  
15 thereunder, provided that the rate so established shall be  
16 substantially equivalent to the average hourly earnings of the  
17 employee, exclusive of overtime premiums, in the particular work  
18 over a representative period of time;

19 and if the employee's average hourly earnings for the workweek  
20 exclusive of payments described in this section are not less than the  
21 minimum hourly rate required by applicable law, and extra overtime  
22 compensation is properly computed and paid on other forms of  
23 additional pay required to be included in computing the regular rate.

24 ~~(o)~~ **(p)** Extra compensation paid as described in this section shall be  
25 creditable toward overtime compensation payable pursuant to this  
26 section.

27 ~~(p)~~ **(q)** No employer shall be considered to have violated subsection  
28 ~~(j)~~ **(k)** by employing any employee of a retail or service establishment  
29 for a workweek in excess of the applicable workweek specified therein,  
30 if:

31 (1) the regular rate of pay of the employee is in excess of one and  
32 one-half (1.5) times the minimum hourly rate applicable to the  
33 employee under section 2 of this chapter; and

34 (2) more than half of the employee's compensation for a  
35 representative period (not less than one (1) month) represents  
36 commissions on goods or services.

37 In determining the proportion of compensation representing  
38 commissions, all earnings resulting from the application of a bona fide  
39 commission rate shall be considered commissions on goods or services  
40 without regard to whether the computed commissions exceed the draw  
41 or guarantee.

42 ~~(q)~~ **(r)** No employer engaged in the operation of a hospital or an

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1 establishment which is an institution primarily engaged in the care of  
 2 the sick, the aged, or the mentally ill or defective who reside on the  
 3 premises shall be considered to have violated subsection ~~(j)~~ **(k)** if,  
 4 pursuant to an agreement or understanding arrived at between the  
 5 employer and the employee before performance of the work, a work  
 6 period of fourteen (14) consecutive days is accepted in lieu of the  
 7 workweek of seven (7) consecutive days for purposes of overtime  
 8 computation and if, for ~~his~~ **the employee's** employment in excess of  
 9 eight (8) hours in any workday and in excess of eighty (80) hours in  
 10 that fourteen (14) day period, the employee receives compensation at  
 11 a rate not less than one and one-half (1.5) times the regular rate at  
 12 which the employee is employed.

13 ~~(r)~~ **(s)** No employer shall employ any employee in domestic service  
 14 in one (1) or more households for a workweek longer than forty (40)  
 15 hours unless the employee receives compensation for that employment  
 16 in accordance with subsection ~~(j)~~: **(k)**.

17 ~~(s)~~ **(t)** In the case of an employee of an employer engaged in the  
 18 business of operating a street, a suburban or ~~an~~ interurban electric  
 19 railway, or a local trolley or motorbus carrier (regardless of whether or  
 20 not the railway or carrier is public or private or operated for profit or  
 21 not for profit), in determining the hours of employment of such an  
 22 employee to which the rate prescribed by subsection ~~(j)~~ **(k)** applies,  
 23 there shall be excluded the hours the employee was employed in  
 24 charter activities by the employer if both of the following apply:

- 25 (1) The employee's employment in the charter activities was  
 26 pursuant to an agreement or understanding with the employer  
 27 arrived at before engaging in that employment.
- 28 (2) If employment in the charter activities is not part of the  
 29 employee's regular employment.

30 ~~(t)~~ **(u)** Any employer may employ any employee for a period or  
 31 periods of not more than ten (10) hours in the aggregate in any  
 32 workweek in excess of the maximum workweek specified in subsection  
 33 ~~(j)~~ **(k)** without paying the compensation for overtime employment  
 34 prescribed in subsection ~~(j)~~: **(k)**, if during that period or periods the  
 35 employee is receiving remedial education that:

- 36 (1) is provided to employees who lack a high school diploma or  
 37 educational attainment at the eighth grade level;
- 38 (2) is designed to provide reading and other basic skills at an  
 39 eighth grade level or below; and
- 40 (3) does not include job specific training.

41 ~~(u)~~ **(v)** Subsection ~~(j)~~ **(k)** does not apply to an employee of a motion  
 42 picture theater.

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1            ~~(v)~~ **(w)** Subsection ~~(j)~~ **(k)** does not apply to an employee of a  
2            seasonal amusement or recreational establishment, an organized camp,  
3            or a religious or nonprofit educational conference center that is exempt  
4            under the federal Fair Labor Standards Act of 1938, as amended (29  
5            U.S.C. 213).

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